

**Miami Inspiration Hospital, Inc. and United Steelworkers of America, AFL-CIO, Petitioner.**  
Case 28-RC-1846

April 28, 1969

**DECISION ON REVIEW AND DIRECTION OF ELECTION**

On November 8, 1968, the Regional Director for Region 28 issued a Decision and Order in the above-entitled proceeding, in which he dismissed the petition on the ground that Miami Inspiration Hospital, Inc., hereinafter referred to as the Employer Hospital, was specifically exempt from the Board's jurisdiction under Section 2(2) of the Act. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, as amended, the Petitioner filed a timely request for review, contending that the Regional Director departed from officially reported Board precedent in dismissing the petition. By telegraphic Order dated January 14, 1969, the National Labor Relations Board granted the request for review. Thereafter, the parties filed timely briefs.

The Board has considered the entire record in this case including the briefs of the parties, with respect to the issues under review, and makes the following findings:

1. The Petitioner seeks to represent a unit of electrical and mechanical maintenance employees employed by the Employer Hospital. The Regional Director, in agreement with the Employer Hospital, dismissed the petition on the ground that the Employer Hospital was excepted from the definition of "employer" within the meaning of Section 2(2) of the Act. We find, contrary to the Regional Director, that the Employer Hospital is an "employer" subject to the Board's jurisdiction.

The Employer Hospital is an Arizona corporation engaged in operating a hospital at Miami, Arizona, and a medical clinic at Globe, Arizona. It is organized on a nonstock membership and nonprofit basis, with several members but no stockholders. No other person, corporation, or entity is legally entitled to receive any of its earnings. The Employer Hospital purchased goods in excess of \$50,000 directly from outside the State of Arizona, and provided medical services with a value in excess of \$500,000 during the 12-month period preceding the hearing in this case.

As discussed more fully, *infra*, these medical services are rendered primarily to employees and dependents of employees of two mining corporations in the area, the Inspiration-Consolidated Copper Company and the Tennessee Corporation, Miami Copper Division. These two mining corporations are organized and operated for profit, and at least part of their net earnings inures to the benefit of private

shareholders or individuals.<sup>1</sup> During the 12-month period preceding the hearing, each of the mining corporations shipped goods having a value in excess of \$50,000 to points outside the State of Arizona.

Prior to the incorporation of the Employer Hospital in 1965, medical facilities were operated by the two mining corporations as a joint venture. Sometime thereafter, in exchange for a 10-year contract to furnish medical services to their employees and dependents of employees, the two mining corporations deeded a clinic building, as well as the land for the clinic and a hospital, to the Employer Hospital. The two mining corporations also loaned funds to the Employer Hospital with which a new hospital was built. These loans are secured by 10-year notes accruing 4-percent annual interest.

The record further indicates, however, that the two mining corporations continued to maintain effective control over the operation of the Employer Hospital after its incorporation in 1965. Thus, the five original "incorporators", who were all management officials or attorneys of the two mining corporations, became the first five "members" of the Employer Hospital. The "members" are authorized to elect, and remove without cause, the board of directors who conduct the "affairs of the corporation." The Articles of Incorporation reflect that all five of the original "members" were elected as directors. The board of directors, in turn, is authorized to appoint or elect the corporate officers, who "hold office at the pleasure of the Board of Directors". The Articles of Incorporation reflect that all four of the original corporate officers were selected from the same original "members" and directors of the Employer Hospital.<sup>2</sup> Finally, the board of directors appoints the administrator who has charge of the Employer Hospital's operations on a day-to-day basis.

It also appears that the Employer Hospital continues to provide medical services primarily for the employees of the two mining corporations and their dependents.<sup>3</sup> The Employer Hospital's records

<sup>1</sup>The Board hereby takes official notice of *Moody's Industrial Manual*, July 1968, pp. 2415-2416, 1991-95, and *Standard & Poor's Standard Corp. Descriptions*, Dec.-Jan. 1968-69, Aug.-Sept. 1968, Vol. F-K, pp. 4880-4881 and Oct.-Nov. 1968, Vol. C-E, pp. 4979-84, which recite in pertinent part that: Inspiration-Consolidated Copper Company has over 10,000 shareholders to whom it has paid dividends from earnings for a number of years including 1968; and that the Tennessee Corporation, Miami Copper Division, has been a subsidiary of Cities Service Company since 1963, the latter having well over 100,000 shareholders to whom it regularly pays dividends from earnings.

<sup>2</sup>Any party to this proceeding, desiring to contest the facts of which we take official notice, may, within 10 days from the date of this Decision, present evidence to the contrary.

<sup>3</sup>The record shows that Weed, a "member", director and officer of the Employer Hospital, retired from his position with one of the mining corporations in October 1968, but it does not indicate whether he likewise retired from the Employer Hospital.

<sup>4</sup>The nature and extent of medical benefits extended to employees and dependents of employees is apparently determined by collective-bargaining agreements between the two mining corporations and various unions. The Employer Hospital's Treasurer testified that there are no payroll

thus show that during the first 8 months of 1968, employees or dependents of employees of the two mining corporations accounted for 75 percent of in-patient days, 76 percent of emergency cases, and 87 percent of the out-patients at the hospital and the clinic.<sup>4</sup>

On essentially these facts, the Regional Director concluded that the Employer Hospital is not subject to the Board's jurisdiction by virtue of the so-called hospital exemption provided in Section 2(2) of the Act, which in pertinent part provides as follows:

The term "employer"...shall not include...any corporation or association operating a hospital, if no part of the net earnings inures to the benefit of any private shareholder or individual....

The Board has construed the foregoing exemption as excluding from its jurisdiction any hospital operated by a nonprofit corporation or association.<sup>5</sup>

The thrust of Petitioner's contention on review is that the Employer Hospital does not satisfy the requirements of that exemption. We find merit in the Petitioner's contention. The Employer Hospital here is ostensibly operated by its "members," Board of Directors, and officers. In fact, all of the "members," and the Board of Directors are either management officers or attorneys of the two mining corporations. The officers of the Employer are appointed by and serve at the pleasure of the Board of Directors. The administrator who has charge of the Employer's operation on a day-to-day basis is also appointed by the Board of Directors. In addition, the great majority of the hospital's patients are employees of the two mining corporations, and to that extent the Employer Hospital may be said to be part and parcel of their operation. Because of this and because of the extremely close relationship between the management of the Employer and that of the mining corporations, we conclude that the Employer is operated, realistically speaking, by these two profitmaking corporations, and only nominally by the nonprofit Employer Hospital corporation. It follows that the limitations of the exemption from Section 2(2) have been exceeded, and that the exemption does not, therefore, apply in this case.<sup>6</sup>

deductions from employees' paychecks at the mining corporations, nor are there any employee contributions deducted to cover medical expenses incurred in the Employer Hospital's facilities. Employees and their dependents do not usually pay the Employer Hospital, as the bills are forwarded to the two mining corporations for payment.

The hospital and the clinic also service nonemployees and nondependents in the area. This policy appears to be based on necessity, since the only other hospital in the Globe, Arizona area, according to the Employer Hospital's Treasurer, is the Gila General Hospital which has been operating at full capacity and, presumably, would be overloaded if the Employer Hospital did not make its facilities available to patients other than the mining corporations' employees and the dependents of those employees.

<sup>4</sup>*General Electric Company, Kadlec Hospital*, 89 NLRB 1247, 1249; *Kennecott Copper Corporation*, 99 NLRB 748.

<sup>5</sup>In construing this statutory exemption, the Board has in the past looked to Congressional intent. *General Electric Company*, *supra*, see also *The Trustees of Columbia University*, 97 NLRB 424. The legislative history of

Furthermore it is clear that the operations of the Employer Hospital are an integral part of the operations of the two mining corporations.<sup>7</sup> For, it is clear, the record evidence indicates that the Employer Hospital functions primarily to care for the employees and dependents of employees of the two mining corporations, consistent with the purpose for which these two mining corporations originally established the Employer Hospital corporation, which was itself a substitution for and continuation of a medical facility formerly operated by them directly. We are satisfied from the record as a whole that divestment to the new body of title to the hospital and of direct operating responsibility amounts to a change in form and not one of substance. We therefore find that the operations of the Employer Hospital are an integral part of activities affecting commerce within the meaning of the Act, and hence are within the Board's statutory jurisdiction, and that it will effectuate the policies of the Act to assert jurisdiction in this proceeding.<sup>8</sup>

2. In view of the above, we find that a question affecting commerce exists concerning the representation of certain employees of the Employer Hospital within the meaning of Section 2(6) and (7) of the Act.

3. We find that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.<sup>9</sup>

All electrical and mechanical maintenance employees employed by the Employer at its Miami, Arizona, and Globe, Arizona, locations, excluding

the charitable hospital exemption indicates that Congress was concerned with excluding from the coverage of the Act those hospitals operated by "charitable" or "eleemosynary institutions", and those "kept up by the donations of benevolent persons", but not those hospitals which were controlled and operated by profit making corporations or enterprises. See 93 CONG. REC. 5129 (daily ed. May 12, 1947); 2 Legislative History of the Labor Management Relations Act, 1947, pp. 1964-65

<sup>7</sup>*Kennecott Copper Company*, *supra*, 751

<sup>8</sup>Given the inapplicability of the statutory exemption, the Employer Hospital is subject to the Board's jurisdiction on several grounds: (1) Inasmuch as the operations of the hospital and clinic are an integral part of the operations of the two mining corporations, stipulated to be engaged in interstate commerce, it follows that in operating these medical facilities, the Employer Hospital and the two mining corporations are engaged in interstate commerce within the meaning of the Act, *Kennecott Copper Company*, *supra*, and cases cited therein, (2) it is an organization which, during the 12-month period preceeding the hearing, has provided services in excess of \$50,000, to the mining corporations which are themselves engaged in interstate commerce, *Siemens Mating Service, Inc.*, 122 NLRB 81; and (3) the dollar volume of its operations satisfies the Board's applicable standard for hospitals not excluded from the definition of an employer under Section 2(2) of the Act, *Butte Medical Properties, d/b/a Medical Center Hospital*, 168 NLRB No 52.

<sup>9</sup>The parties to this proceeding are in agreement that a unit composed of the electrical and mechanical maintenance employees employed by the Employer Hospital is appropriate. The record denotes that these employees perform maintenance work on heating, air conditioning, and other mechanical equipment, that they are separately supervised by a Chief Engineer in charge of maintenance, that they do not interchange with other employees, and that they are all salaried and receive the same fringe benefits. We, therefore, find that these employees constitute a distinct and readily identifiable group, who share a community of interest apart from other employees, and that such a unit is appropriate for the purposes of collective bargaining. See *American Cyanamid Co.*, 131 NLRB 909

all other employees, office clerical employees, professional employees, watchmen, guards and supervisors as defined in the Act.

[Direction of Election<sup>10</sup> omitted from publication.]

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<sup>10</sup>An election eligibility list, containing the names and addresses of all the

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eligible voters, must be filed by the Employer with the Regional Director for Region 28 within 7 days after the date of this Decision and Direction of Election. The Regional Director shall make the list available to all parties to the election. No extension of time to file this list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. *Excelsior Underwear, Inc.*, 156 NLRB 1236