

Duke University and International Union of Operating Engineers, Local Union No. 465, AFL-CIO, Petitioner. Case 11-RC-3418

November 7, 1972

DECISION ON REVIEW

On January 31, 1972, the Regional Director for Region 11 issued a Decision and Direction of Election in the above-entitled proceeding in which he found appropriate a campus-wide unit of the Employer's maintenance employees, excluding those who spend a majority of their working time in the Employer's hospital. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Employer filed a timely request for review of the Regional Director's Decision, contending that certain of the Regional Director's factual findings were substantially in error and also that there are compelling reasons for reconsideration of an important Board rule or policy.

On May 9, 1972, the National Labor Relations Board by telegraphic order granted the request for review and stayed the election pending decision on review. Thereafter, the Employer filed a brief on review.

The Board has reviewed the entire record in this case with respect to the issues under review and affirms the Regional Director's Decision and Direction of Election except as modified herein.

The Employer is a private nonprofit university incorporated under the Non-Profit Corporation Act of the State of North Carolina, and has an enrollment of approximately 7,200 students in 44 academic departments and 7 graduate schools. It also operates a medical center which encompasses a medical school, a nursing school, and a hospital. The hospital is primarily concerned with patient care and contains 835 beds.

The unit sought by Petitioner is a campuswide unit of maintenance employees on the Duke University campus at Durham. These maintenance personnel are organized administratively into three divisions or departments.

The physical plant department is responsible for the maintenance of physical facilities which are not included in the medical center, on both the east and west campuses. The medical center facilities, including the hospital, are maintained by the medical center engineering operations department. These two maintenance departments employ similar categories of employees. The communications facilities and

equipment throughout the University, including the medical center and the hospital, are maintained by employees in the special utilities department.

The special utilities department is broken down into two subdivisions. One subdivision is the high voltage electric power service component which employs high voltage technicians. The other subdivision is the communications and electronics subdivision, which employs medical electronics equipment technicians, cross-bar technicians, and communications and electronics servicemen. The medical electronics equipment technicians install and maintain sophisticated electronic equipment serving patients. The cross-bar technicians maintain the telephone switching gear which, although located in the basement of the hospital, serves the entire University including the medical center. The communications and electronics servicemen install and maintain the remainder of the electronic equipment, such as paging systems, television sets, and telephone equipment, throughout the University.

The Regional Director found the requested campuswide unit to be appropriate in accordance, he said, with the agreement of the parties. In accordance with a prior Duke case involving a unit of service employees he excluded all maintenance employees who spend more than 50 percent of their worktime in the hospital.¹

The Regional Director noted in his Decision that, for purposes of deciding whether employees spend a majority of their worktime in the hospital, the Employer maintains records which are a sufficient basis for making this determination except with respect to the three cross-bar technicians who maintain the communications switching equipment located in the basement of the hospital. As to these employees, the Regional Director concluded that their unit placement would be decided in accordance with the division of the communication budget between the hospital and the rest of the University. That is, said the Regional Director, the work of these employees on switching equipment would be considered work in the hospital in the same percentage as the percentage of the total cost of communication service was allocated to the hospital during the 1-year period preceding the payroll eligibility date.

In the request for review, the Employer takes issue with a number of the findings and conclusions of the Regional Director. The Employer avers that, contrary to the Regional Director, the parties did not agree on a campuswide unit but agreed only with respect to the unit placement of maintenance personnel assigned to the physical plant department. The Em-

¹ *Duke University*, 194 NLRB No. 31, wherein the Board, Member Fanning dissenting, determined that since the hospital operated by the Employer was exempt from the Board's jurisdiction under the provisions of

Sec. 2(2) of the Act, the appropriate university-wide unit of biweekly service employees would exclude any employee working a majority of his time within the hospital or hospital-related satellite facilities

ployer points out that there is no support in the transcript of the hearing for the finding that it maintains records setting forth the assignments to hospital or nonhospital facilities of all its maintenance personnel. In this same connection, the Employer further argues, in essence, that even if such records existed the 50-percent test should be reconsidered. For, says the Employer, the application of the test to its maintenance personnel will require a fracturing of its administrative departments in a way which will cause disparate unit placement of employees working side by side merely because of the circumstance that within the past year one may have spent just over 50 percent of his worktime in the hospital and the other just under that figure. Finally, the Employer disputes the validity of the Regional Director's budget allocation rule for the inclusion or exclusion of the cross-bar technicians. We shall consider each of these contentions *seriatim*.

While the Employer is correct that no specific agreement of the parties with respect to the appropriateness of the requested campuswide unit appears in this record, we nevertheless conclude that such is the proper scope of the unit herein. The campus (including both the east and the west campus) is a well-defined geographical area. There is no showing that any of the employees sought or any employees performing similar work are located off-campus. Further, the Employer's maintenance employees are paid biweekly, enjoy the same fringe benefits, and are subject to the same centralized administration and personnel manual.² We therefore affirm the Regional Director's finding that a campuswide unit is appropriate.³

We find merit, however, in the Employer's contention that the application of the 50-percent test to the unit placement of *each* individual maintenance employee is unwarranted in the circumstances of this case.⁴ For the problems of administering possible separate schedules of wages and fringe benefits for represented and unrepresented employees performing essentially the same work under the same supervision are self-evident, particularly where, as here, the record indicates that the Employer makes assignments of individual employees to both hospital and nonhospital facilities. Indeed from the limited job assignment records (for communications and electronics servicemen only) which were placed in evidence, it is difficult to establish with certainty for each such employee where the majority of his assignments took place during the past year.

² All biweekly personnel are governed by a personnel manual published by the personnel policy committee

³ *C W Post Center of Long Island University*, 189 NLRB No 109. The Employer did not state any position with respect to the scope of the unit

⁴ Application of the 50-percent test to individual employees did not apparently create any unit placement issue in the circumstances of the prior

In these circumstances we shall not apply the 50-percent test to each employee but we shall instead apply the 50-percent test on an employee classification basis. That is, if 50 percent or more of the worktime of employees in a given classification—taken as a group—is spent in nonhospital facilities, all employees within that classification will be included in the unit. If more than 50 percent of the worktime of all employees in a classification—taken as a group—is spent in hospital or hospital-related facilities, all employees within that classification will be excluded.

There is testimony in the record which will permit us to determine the unit placement on the basis of all of the involved classifications⁵ except for the cross-bar technicians, who will be treated separately *infra*. Thus, the record shows that none of the classifications in the physical plant department, except the air-conditioning and refrigeration men, spend more than 50 percent of their time in the hospital, while all classifications in the medical center engineering and operations department spend more than 50 percent of their time in the hospital. Two classifications in the special utilities department, the medical electronics equipment technicians and the communications and electronics servicemen, spend more than 50 percent of their time in the hospital, while the high voltage technicians do not.

Accordingly, the high voltage technicians and all classifications in the physical plant department, except the air-conditioning and refrigeration men, will be included in the bargaining unit. All classifications in the medical center engineering and operations department as well as the medical electronics equipment technicians, the communications and electronics servicemen, and the air-conditioning and refrigeration men will be excluded from the bargaining unit.

There remains the question of the unit placement of the cross-bar technicians. While the testimony indicates that the three employees in this classification spend 100 percent of their time working in the hospital because the equipment which they maintain happens to be located there (although such equipment services the entire University), the record does not indicate how their maintenance work is divided between hospital-related and nonhospital communications elements, nor, more precisely, the extent to which the switching equipment they maintain concerns hospital-related communications elements as opposed to University communications elements

Duke case, supra, where only 9 employees voted subject to challenge out of the total of 731 eligible voters.

⁵ The testimony with respect to the job assignments of the communications and electronics servicemen is not inconsistent with the records submitted with respect to their job assignments.

which are not hospital related. We shall, therefore, permit the cross-bar technicians to vote subject to challenge.

In view of the foregoing, we conclude that the following unit is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All maintenance personnel on the Duke University Campus at Durham, North Carolina, excluding medical electronics equipment technicians, communications and electronics servicemen, air conditioning and refrigeration men, all classifications in the medical center engineering and operations department, and all other classifications whose incumbents as a group spend more than 50 percent of their worktime in Duke Hospital.

Accordingly, we shall remand the case to the Regional Director for the purpose of conducting an election pursuant to his Decision and Direction of

Election, as modified herein, except that the payroll period for determining eligibility shall be that immediately preceding the date of issuance. [*Excelsior* footnote omitted from publication.]

MEMBER FANNING, dissenting:

In an earlier proceeding involving *Duke University*, 194 NLRB No. 31, I dissented from the majority decision to exempt a hospital operated by an employer over which the Board asserts its jurisdiction. That opinion was based on a survey of the relevant legislative history and general legal considerations.

The decision here demonstrates that the majority decision in that case, in addition to being unsound in law, raises almost insuperable problems in day-to-day administration and will certainly hinder the expeditious disposition of this kind of case. I therefore adhere to my earlier dissent and would include all hospital employees in the unit.