

Epi-Hab Evansville, Inc. and District Lodge 153 of the International Association of Machinists and Aerospace Workers, AFL-CIO, Petitioner. Case 25-RC-5297

August 21, 1973

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer John Petrison on March 28, 1973, at Evansville, Indiana. Thereafter, pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Regional Director for Region 25 transferred this case to the Board for decision. A brief has been timely filed by the Employer.

The Board has reviewed the rulings of the Hearing Officer made at the hearing and finds that they are free of prejudicial error. They are hereby affirmed.

Upon the entire record in this case, the Board finds:

Epi-Hab is a nonprofit charitable institution organized for the purpose of providing job training, gainful employment, industrial placement, and other aid, opportunities, and services to help epileptic persons. It is exempt from Federal income taxes and state unemployment compensation requirements. Epi-Hab, as a matter of policy, has determined not to apply for "sheltered workshop" status under the Fair Labor Standards Act. As part of its program, Epi-Hab provides hand assembly work for approximately 40 individuals, all but a few of whom are epileptics.¹ Most of

its work is supplied by Whirlpool as a community service. Generally the companies providing work to Epi-Hab also supply the raw materials. According to the most recent figures available, Epi-Hab's gross annual receipts from sales were \$440,022.43.

Epileptics are referred to Epi-Hab from various agencies, including the vocational rehabilitation agencies of several States. When an epileptic is referred from a state vocational rehabilitation agency, Epi-Hab receives a subsidy for a 12-week training program. If an applicant qualifies as an epileptic, and is not physically incapable of performing hand assembly work, his or her name is placed on a waiting list and applicants are called to work as vacancies occur.

The individuals working at Epi-Hab are subject to layoff, discipline, and discharge for reasons other than their medical condition. They receive paid vacations and are paid at least minimum wages. An individual's salary is not reduced when prevented from working by an epileptic seizure.

On these facts, we find that Epi-Hab's commercial activities are merely ancillary to its rehabilitative objective so that a labor dispute would have only minimal impact on commerce. Therefore, we find this case to be indistinguishable from *Sheltered Workshops of San Diego, Inc.*, 126 NLRB 961. For the reasons cited therein, we believe it would not effectuate the policies of the Act to assert jurisdiction. Accordingly, we shall dismiss the petition.

ORDER

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

¹ The nonepileptics are four truckdrivers, one bookkeeper, one receptionist-secretary, two foremen, one scheduler-inventory controlman, one registered nurse, and the general manager