

Duke University¹ and International Union of Operating Engineers, Local Union No. 465, AFL-CIO, Petitioner. Cases 11-RC-3953 and 11-RC-3954

May 5, 1975

DECISION ON REVIEW, ORDER, AND DIRECTION OF ELECTION

Upon petitions duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Ronald Yost of the National Labor Relations Board. On November 22, 1974, the Regional Director for Region 11 issued a Decision and Direction of Election in each of the above-entitled proceedings. Thereafter, the Employer, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, filed a request for review of the Regional Director's decisions on the grounds that he erred in finding appropriate the respective units of maintenance employees and switchboard operators.

On January 16, 1975, the Board, having determined that this and a number of other cases in the health care industry presented issues of importance in the administration of the National Labor Relations Act, as amended, scheduled oral argument in several of the cases, including Case 11-RC-3953, as well as oral argument on the general question of the composition of appropriate bargaining units in the health care industry. Member Kennedy dissented from the grant of oral argument. Oral arguments were heard on January 27, 1975. Briefs *amici curiae* were filed by interested parties and have been duly considered by the Board.

On February 4, 1975, the National Labor Relations Board, by telegraphic order, granted the Employer's request for review. Thereafter, the Petitioner filed briefs, and the Employer filed a brief on review. The Board has considered the entire record in these cases, with respect to the issues under review, including the briefs on review, and makes the following findings:

The Employer, a university located at Durham, North Carolina, is a nonprofit corporation. Included in its operations is the Medical Center, which employs approximately 7,000 employees, of whom approximately 6,000 are hourly paid, nonacademic, and non-professional employees. The Medical Center encompasses a hospital, private diagnostic clinics, a school of medicine, and a school of nursing.

The Petitioner sought to represent two separate units of the Employer's employees: approximately 22 telephone switchboard operators servicing the entire University and approximately 108 maintenance employees in the Medical Center. The Petitioner urged that these

maintenance employees be added to an existing certified unit consisting of the Employer's maintenance employees excluding those in the Medical Center.

The Employer contended that the petitioned-for unit of maintenance employees is inappropriate because it is not a functionally distinct or homogeneous group of employees possessing a community of interest separate and apart from other health care institution employees, and that, at the very least, a service and maintenance unit, such as that found appropriate in *Georgetown University*,² is required. Further, the Employer argued that health care institution employees should not be allowed to join with nonhealth care institution employees in a single bargaining unit. Similarly, with respect to the unit of switchboard operators sought by the Petitioner, the Employer contended that such unit is inappropriate because the switchboard operators are health care institution employees sharing a community of interest with all hourly paid, nonacademic, non-professional employees in the Medical Center.

The Regional Director denied the Petitioner's request for accretion of the maintenance employees, finding that, due to the peculiar requirements of the Act regarding employees of health care institutions, particularly the requirements of Section 8(g), the Medical Center's maintenance employees cannot be integrated, for bargaining purposes, with maintenance employees not subject to the above-mentioned special provisions of the Act. He found, however, that each of the petitioned-for units is appropriate and he directed elections therein.

We agree with the Regional Director's conclusions that both the maintenance employees at the Medical Center and the University's switchboard operators are employees of the health care institution and as such are subject to the special provisions of the Act relating to such employees. However, we do not adopt his finding that the addition of the Medical Center maintenance employees to the existing maintenance unit is thereby precluded. We further reject his findings that the unit of switchboard operators sought is appropriate for the purposes of collective bargaining.

The employees sought to be included in the maintenance unit are carpenters, electricians, general utility servicemen, insulation mechanics, laborers, mechanics, painters, plasterer masons, plumbers, refrigeration and air conditioning mechanics, sheet metal workers, steamfitters, trades helpers, and exterminators.

In a prior decision³ the Board found appropriate a unit of maintenance personnel at the Duke University campus at Durham, North Carolina, excluding the Medical Center maintenance employees solely because

² *The President and Directors of Georgetown College for Georgetown University*, 200 NLRB 215 (1972).

³ *Duke University*, 200 NLRB 81 (1972)

¹ The name of the Employer appears as amended at the hearing.

Section 2(2) of the National Labor Relations Act at that time precluded the Board from asserting jurisdiction over nonprofit hospitals such as that involved herein. Inasmuch as the 1974 health care amendments to the Act authorize the Board to assert jurisdiction over such hospitals, the basis for the exclusion of these employees from an otherwise all-campus unit of maintenance employees has ceased to exist.⁴ In light of the Board's previous unit determination, and as the Petitioner is willing to add them to the existing university maintenance unit, we shall afford these employees an opportunity in a self-determination election to express their views as to whether or not they desire to be added to that unit. In so holding, we do not, at this time, reach the question of whether a unit of maintenance personnel is appropriate for bargaining in the health care industry.⁵ Rather, we find that the particular facts in this case justify our giving the maintenance employees in the Medical Center an opportunity to vote on whether they want to be added to the existing unit.⁶

The University's 22 switchboard operators sought to be included in a separate unit operate from facilities located on the first floor and in the basement of the hospital.⁷ The operators are responsible for operating the telephone switchboards and handling voice and radio paging in the hospital and Medical Center. More than 50 percent of all incoming and outgoing calls relate directly to the Medical Center, and the critical paging function is almost exclusively confined to the Medical Center. The switchboard operators are also responsible for handling emergency calls by use of a "Code 5" signal used within the Medical Center. Cardiac arrest teams and other emergency functions in the hospital are entirely dependent on the operators who must, based upon the information they receive from the emergency calls, utilize voice and radio paging to immediately advise the appropriate personnel within the Medical Center.

⁴ As we found in *Duke University*, *supra*, the physical plant department, responsible for the maintenance of physical facilities which are not included in the Medical Center, and the Medical Center engineering operations department employ similar categories of employees. Further, all come under the jurisdiction and policies of the University's personnel department.

⁵ Members Kennedy and Penello do not leave for another day the issue as to the appropriateness of a unit of maintenance personnel. In *Shriners Hospital for Crippled Children*, 217 NLRB 806, issued this day, they reached the conclusion that a maintenance unit is inappropriate.

⁶ The obligations of the parties under the special provisions of the Act relating to employees of health care institutions are in no way diminished by this determination.

⁷ It is planned to move these facilities from the hospital to the Telecom Building. The responsibilities and duties of the operators will remain unchanged, however.

On the basis of their separate supervision, location, and job duties and their lack of immediate contact with other employees, it is evident that the switchboard operators, as the Regional Director found, possess a distinct community of interest.⁸ However, having carefully considered the legislative history surrounding passage of the health care amendments, it is our conclusion that finding a unit limited to switchboard operators at a health care institution is congressionally foreclosed. If each such department grouping of employees at a health care facility was, on similar bases, found to be appropriate, a severe fragmentation of bargaining units would necessarily be the result.

Accordingly, we find that the unit of switchboard operators sought herein is not appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act, and we shall dismiss the petition in Case 11-RC-3954.

In Case 11-RC-3953, having found that the maintenance personnel at the Employer's Medical Center should be given the opportunity by a self-determination election to express their desires with respect to being included in the existing maintenance unit represented by Petitioner, we shall direct an election in the following voting group:

All utility servicemen, senior electricians, electricians, trades helpers, senior carpenters, carpenters, senior plaster masons, plaster masons, senior painters, painters, senior refrigerating and air-conditioning mechanics, refrigeration and air-conditioning mechanics, senior plumbers, plumbers, senior steamfitters, steamfitters, insulation mechanics, laborers, senior medical electricians servicemen, medical electricians servicemen, senior sheetmetal mechanics, and sheetmetal mechanics at the Employer's Medical Center, excluding all supervisors, foremen, executive housekeepers, housekeepers, fire and safety coordinator, safety instructor, manager of medical center parking and traffic, parking supervisor, parking lot attendants, bus drivers, professional employees, guards and watchmen as defined in the Act.

⁸ Members Kennedy and Penello would not find either in the health care industry or in any other industry that switchboard operators possess a distinct community of interest.

If a majority of the employees in the above voting group cast their votes for the Petitioner, they will be taken to have indicated their desire to constitute a part of the existing maintenance unit currently represented by the Petitioner, and the Petitioner may bargain for such employees as part of that unit. If a majority of them vote against the Petitioner, they will be taken to have indicated their desire to remain unrepresented,

and the Regional Director will issue a certification of results of election to that effect.

ORDER

It is hereby ordered that the petition filed in Case 11-RC-3954 be, and it hereby is, dismissed.

[Direction of Election and *Excelsior* footnote omitted from publication.]