

Trinity Lutheran Hospital, Menorah Medical Center, St. Joseph Hospital and Research Hospital & Medical Center, Employer-Petitioners and Operating Engineers, Local 6, AFL-CIO

Menorah Medical Center, Employer-Petitioner and Firemen & Oilers, Local 1, AFL-CIO. Cases 17-RM-540, 17-RM-542, 17-RM-543, 17-RM-544, and 17-RM-541

June 3, 1975

### RULING ON ADMINISTRATIVE ACTIONS

Having duly considered the Petitioners' joint appeal from the Regional Director's administrative dismissal of the instant petitions because of the existing contract-bar rules, the Board finds as follows:

Each of the Petitioners herein is a health care institution within the meaning of Section 2(14) of the National Labor Relations Act, as amended in 1974. Each of the petitions was filed on the 92d day prior to the expiration date of the current collective-bargaining agreements between the Employer-Petitioners and the Unions in the bargaining units involved herein. The Regional Director administratively dismissed the petitions as untimely filed under the authority of *Leonard Wholesale Meats, Inc.*, 136 NLRB 1000, 1001 (1962), wherein the Board held that to be timely filed a petition must be filed more than 60, but not more than 90, days prior to the expiration date of a subsisting contract covering the unit involved. In their joint appeal, the Employer-Petitioners urge that the 1974 amendments impose special notice obligations upon health care institutions which warrant modification of these rules. We agree.

The present rules as to the timely filing of representation petitions permit a 30-day "open period" between the 90th and 60th days prior to the expiration date of the agreement, followed by a 60-day "insulated period" during which no petition can be timely filed.<sup>1</sup> The insulated period coincides with

the 8(d)(1) obligation regarding the required notice of contract termination or modification to the other party and was designed to "prevent the threat of overhanging rivalry and uncertainty during the bargaining period" which was clearly contemplated in the legislation.<sup>2</sup>

In 1974, the National Labor Relations Act was amended specifically to provide that, in labor agreements involving health care institutions, any party desiring to open such agreement must give at least 90 days' notice to the other party and 60 days' notice to the Federal Mediation and Conciliation Service before contract expiration.<sup>3</sup> It is clear that the 1974 amendments were designed to encourage and facilitate bargaining between the parties during the 90 days prior to contract expiration. Under the Board's present rules, the onset of bargaining would be during the 90-to-60-day open period. By requiring a petition to be filed during the 90-to-60-day period, we would be encouraging rather than preventing threat of rivalry and uncertainty. To avoid such anomalous consequences from the Board's own rules and to further promote the stability of on-going bargaining relationships, we shall modify the length of the insulated period for contracts in *health care institutions* to 90 days to coincide with the 90 days' notice provision applicable thereto. At this time, we see no reason to provide more than a 30-day open period or to extend the insulated period beyond the expiration date of the contract.<sup>4</sup> Accordingly, all petitions filed more than 90 days but not over 120 days before the terminal date of any contract involving a *health care institution* will hereafter be found timely. However, to protect parties who have filed or intend to file petitions in the immediate future in good-faith reliance on our old rules, we shall process petitions which are timely thereunder.

As the Employer-Petitioners, to protect their position during the pendency of these appeals, had filed duplicate petitions which were timely under the *Leonard Wholesale* rule and which are now being processed, we shall not reinstate the instant petitions.

institution, the provisions of this section 8(d) shall be modified as follows:

(A) The notice of section 8(d)(1) shall be ninety days; the notice of section 8(d)(3) shall be sixty days; and the contract period of section 8(d)(4) shall be ninety days.

<sup>4</sup> We recognize that the Federal Mediation and Conciliation Service is entrusted with more responsibility for bringing the parties to an agreement when employees of a health care institution are involved than in other industries affecting commerce. The Federal Mediation and Conciliation Service has not requested any change in our rules to accommodate to its functions therein. See *Aerojet-General Corporation*, 144 NLRB 368, 371 (1963).

<sup>1</sup> *Leonard Wholesale Meats, Inc.*, cited by the Regional Director, shortened the "open period" for the filing of a petition established in *Deluxe Metal Furniture Company*, 121 NLRB 995, 999, 1000 (1958), from the 150 days before the termination of the contract to 90 days as an accommodation to the Board's own expedited procedures through its delegation to its Regional Directors of its powers under Section 9 of the Act, on May 15, 1961.

<sup>2</sup> See *Deluxe Metal Furniture Company*, *supra*, 1000-1; *De Soto Creamery and Produce Company*, 94 NLRB 1627, 1629-31 (1951).

<sup>3</sup> The pertinent amendment to Sec. 8(d)(4) reads as follows:

Whenever the collective bargaining involves employees of a health care